

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA)
)
v.) No. 3:08-CR-42
) (Phillips)
BRETT EDWARD DIRR,)
RENEE DIRR)

MEMORANDUM AND ORDER

On July 24, 2009, the Honorable C. Clifford Shirley, United States Magistrate Judge, filed an 6-page Report and Recommendation (R&R) [Doc. 123] in which he recommended that defendants' motion to dismiss for lack of venue [Doc. 113] be denied.

This matter is presently before the court on defendants' timely objections to the R&R [Doc. 127]. As required by 28 U.S.C. § 636(b)(1), the court has now undertaken a *de novo* review of those portions of the R&R to which defendants object. For the reasons that follow, the court finds itself in agreement with Judge Shirley's thorough analysis of the legal issues contained in defendants' motion to dismiss. Consequently, defendants' objections will be overruled, the R&R will be accepted in whole, and the underlying motion to dismiss will be denied.

As an initial matter, the court notes that defendants were given extensions of time to file motions in this case. The court set a motion deadline of August 29, 2008 for the parties to file motions. The instant motion was filed by defendants on April 28, 2009. As noted by the magistrate judge, the motion to dismiss for lack of venue was filed months after the filing deadline set by the court. Accordingly, the court finds that the government's motion to strike the motion as untimely is well taken.

Although finding the motion untimely, the magistrate judge made findings that the motion was without substantive merit, and this court agrees. "Venue is proper in conspiracy prosecutions in any district where the conspiracy was formed or in any district where an overt act in furtherance of the conspiracy was performed." *United States v. Scaife*, 749 F.2d 338, 346 (6th Cir. 1984). Here, the indictment alleges that defendants are residents of Blount County, Tennessee, and that certain acts occurred in this district. With regard to failure to file tax returns, the Sixth Circuit has found that venue is proper in the district of the taxpayers' residence. *United States v. Bugai*, 1998 WL 553168 (6th Cir. Aug. 21, 1998). Accordingly, the court finds that venue is proper in the Eastern District of Tennessee, and defendant's objections are overruled.

For the foregoing reasons, as well as the reasons articulated by Judge Shirley in his R&R, defendants' objections to the R&R [Doc. 127] are hereby **OVERRULED** in their entirety whereby the R&R [Doc. 123] is **ACCEPTED IN WHOLE**. Accordingly, defendants'

motion to dismiss for lack of venue [Doc. 113] is **DENIED** in its entirety. The government's motion to strike the defendants' motion to dismiss as untimely [Doc. 115] is **GRANTED**.

ENTER:

s/ Thomas W. Phillips
United States District Judge